

*United States Attorney
Southern District of New York*

March 25, 2021

BY ECF AND EMAIL

The Honorable Loretta A. Preska
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: *United States v. Jose Erbo*, 97 Cr. 1105 (LAP)

Dear Judge Preska:

Defendant Jose Erbo, who is presently serving a sentence of life plus 45 years in prison for his role in multiple murders and other racketeering crimes, recently filed a 168-page *pro se* motion (Dkt. 288) seeking to reduce his sentence to time served pursuant to 18 U.S.C. § 3582(c)(1)(A). The Government respectfully requests a two-week extension of the deadline for the Government's response to Erbo's motion, from March 31 to April 14, 2021. The requested extension will not cause any undue prejudice to Erbo, as this Court lacks jurisdiction to grant his motion. In December 2020, Erbo filed a notice of appeal with the Second Circuit from this Court's denial of Erbo's most recent habeas petition pursuant to 28 U.S.C. § 2255 attacking his judgement of conviction and sentence. After commencing that appeal, which remains pending, Erbo filed the instant § 3582(c)(1)(A) motion challenging his sentence. That appeal divests this Court of jurisdiction to grant Erbo's motion. *See, e.g., United States v. Martin*, No. 18 Cr. 834 (PAE), 2020 WL 1819961, at*1 (S.D.N.Y. Apr. 10, 2020). This Court can, however, deny the motion if the Court finds that it lacks merit pursuant to Fed. R. Crim. Proc. 37(a)(2). Because the Court lacks jurisdiction to grant Erbo's motion in light of his pending appeal, the requested extension will not impose any unfair prejudice on Erbo, but will give the Government the additional time needed to properly respond to the alleged merits of the claims set forth in his 168-page motion. Accordingly, the Government respectfully requests that the Court extend the deadline for the Government's response to Erbo's motion to April 14, 2021.

Respectfully submitted,

AUDREY STRAUSS
United States Attorney

by: /s/
Samson Enzer
Assistant United States Attorney

cc: Jose Erbo (via mail)
BOP Reg. No. 21134-069
United States Penitentiary McCreary
330 Federal Way, Pine Knot, KY 42635

SO ORDERED.

Dated: March 26, 2021
New York, New York

Luella A. Presby

LORETTA A. PRESKA, U.S.D.J.